LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 21 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 116

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION # 1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ALVIN J. LISKA,
Attorney for Petitioners,
Local # 1418,
2-W-23, City Hall,
New Orleans, Louisiana 70112.

VICTOR H. HESS, JR.,
Attorney for Petitioners,
Local # 1419
1411 Decatur Street,
New Orleans, Louisiana

HAUSER PRINTING CO., INC., "Legal Printers", 441 GRAVIER ST., NEW ORLEANS, LA.

INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement of the Case	3
Reasons for Granting the Writ	5
I. The Court of Appeals has decided an important question of Federal law in a way in conflict with applicable decisions of this Court	5
A. *Sinclair Refining Company vs. Atkinson* case	5
B. *Philadelphia Marine Trade Association* case	8
II. The questions presented by the petition are of major significance in the administration of the National labor laws and affect basic interpretation of collective bargaining agreements	10
Conclusion	11

Appendix A, Opinion and Decree of the United States Court of Appeals for the Fifth Circuit, reported in 389 F. 2d 369	13
Appendix B, Percuriam decree of the U. S. Court of Appeals for the Fifth Circuit denying rehearing	21
Appendix C, Opinion of the District Judge for the United States District Court, Eastern District of Louisiana, New Orleans Division	23

AUTHORITIES CITED

Cases

PAGE

Avco Corporation vs. Aero Lodge No. 735, Int'l Ass'n of Mach. & Aero W., ____ U.S. ____, ____ L. Ed. 2d, 88 S. Ct. 1235 (April 8, 1968) 10

International Longshoremen's Assn. vs. Philadelphia Marine Trade Association, ____ U.S. ____, ____ L. Ed. 2d ____, 88 S. Ct. 201 (1967) 5, 8, 10

Mastro Plastics Corporation vs. National Labor Relations Board, 350 U.S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956) 10

Sinclair Refining Company vs. Atkinson, 370 U.S. 195, 8 L. Ed. 2d 440, 82 S. Ct, 1328 (1962) 5, 6, 7, 8, 9, 10, 11

United States vs. Hutchinson, 312 U.S. 219, 85 L. Ed. 788, 61 S. Ct. 463 (1941) 8

Statutes

National Labor Relations Act, as amended, 29 U.S.C.A., Section 141, et seq. 3, 4

Norris-LaGuardia Act 29 U.S.C.A., Section 101, et seq. 3, 6, 7, 8, 9

Federal Rules of Civil Procedure

Rule 65 (d) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No.

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION # 1418, ET. AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To The Honorable The Supreme Court of The United States of America and The Chief Justice and Associate Justices Thereof:

General Longshore Workers, I.L.A. Local Union #1418 and General Longshore Workers, I.L.A. Local Union #1419 seeks a writ of certiorari to review a final decree of the United States Court of Appeals for the Fifth Circuit rendered on the 26th day of January, 1968, overruling the judgment of the United States District Court for the Eastern District of Louisiana, maintaining a plea to the jurisdiction.

I.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit overruled the United States District Court for the Eastern District of Louisiana. The opinion of the District Judge and his action on motions are annexed hereto as Appendix "C". To the best of Petitioner's knowledge, said decision has not been reported officially.

The opinion and decree of the Court of Appeals for the Fifth Circuit, sub. noma., *New Orleans Steamship Association vs. General Longshore Workers, I.L.A. Local Union No. 1418, et al,* is reported in 389 F. 2d 369, and is annexed hereto as Exhibit "A".

The per curiam decree of the United States Court of Appeals for the Fifth Circuit denying rehearing has not been reported and is annexed hereto as Appendix "B".

II.

JURISDICTION

(a) The aforementioned final decree of the United States Court of Appeals for the Fifth Circuit was entered on January 26, 1968, the day of rendition.

(b) Rehearing was applied for and denied on the 12th day of March, 1968.

(c) On the 18th day of March, 1968, an order was rendered, staying the mandate for a period of thirty days, to and including the 17th day of April, 1968.

On the 22nd day of April, 1968, an Order was rendered staying the mandate for an additional period of thirty days, to and including the 22nd day of May, 1968.

(d) The jurisdiction of this Court is invoked under

U.S.C., Section 1254 (1) because the decision rendered by the United States Court of Appeals involves a federal question decided in a way in conflict with applicable decisions of this Court.

III.

QUESTIONS PRESENTED

Whether Federal Courts have jurisdiction to enjoin a labor organization from engaging in a strike or work stoppage, actual or prospective, by the enforcement of the award of an arbitrator, in view of the Norris LaGuardia Act (29 U.S.C.A. Section 101, et seq.).

Whether an arbitrator can issue an award under a labor contract which, on its face, is unenforceable in the Federal Courts, because of the Federal Court's lack of jurisdiction to issue restraining orders under the Norris-LaGuardia Act (29 U.S.C.A. 101, et seq.).

Whether an arbitrator's award, ordering a union to cease and desist from work stoppages or strikes "in violation of their contract" in the future, can or should be enforced by an order by a mandatory injunction of the Federal Courts.

IV.

STATUTES INVOLVED

This case involves Section 301 of the National Labor Relations Act, as amended 29 U.S.C.A. 141, et seq. and the Norris LaGuardia Act, Section 101, et seq.

V.

STATEMENT OF THE CASE

General Longshore Workers Local Union No. 1418 and General Longshore Workers Local Union No. 1419 (hereinafter referred to as the "Union") are labor organi-

zations, and together represent all longshoremen in the Port of New Orleans. The New Orleans Steamship Association (hereinafter referred to as "Association") represents employers who employ the longshoremen represented by the Union, which longshoremen load and unload cargo in the Port of New Orleans. The Union and the Association have for many years negotiated and entered into collective bargaining agreements. Those agreements material herein have contained a clause prohibiting strikes and work stoppages, and providing for a grievance and arbitration procedure.

On October 5, 1965, the Association alleged that a series of work stoppages had occurred and requested that the arbitrator (selected from a panel of arbitrators set up in the collective bargaining agreement) call a hearing on these allegations. The hearing began October 8th, 1965, and ran for a period of four (4) days. During the hearing, the Union contested all matters. Subsequently, the arbitrator issued a decision and award, in which he directed that the Union cease and desist from work stoppages in violation of the contract.

On March 16, 1966, the Association filed the complaint herein, based upon alleged violation of the arbitrator's cease and desist award, and claiming a violation of the contract thereby. The action was based upon Section 301 of the Labor-Management Relations Act.

On March 23, 1966, the Association filed a motion for a mandatory injunction seeking to enjoin the unions from work stoppages and to require them to abide by the cease and desist order of the arbitrator. The Union filed a motion to dismiss on April 11, 1966.

On February 27, 1967, the District Court denied the

Association's motion for mandatory injunction and granted the Union's motion to dismiss the complaint.

The Association filed an appeal in the United States Court of Appeals for the Fifth Circuit on May 8, 1967. After briefs and argument, the Court of Appeal overruled the District Court and remanded the case. In so ruling, the Court of Appeals held that *Sinclair Refining Company vs. Atkinson*, 370 U.S. 196, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962) was not applicable because of the intervening arbitrator's award; and, so holding, the Court likewise held that the provisions of the Norris LaGuardia Act were not applicable because the District Court was not enjoining peaceful picketing but was merely enforcing an award of an arbitrator.

The issues in the instant case are strikingly similar to those raised in *International Longshoremen's Assn. v. Philadelphia Marine Trade Association*, ... U.S. ....., ... L. Ed. 2d ....., 88 S. Ct. 201 (1967).

VI.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

A.

Sinclair Refining Company vs. Atkinson Case

In the *Sinclair* case, the employer alleged that over a period of nineteen (19) months, the Union had engaged in nine (9) separate strikes, each of which, the employer claimed, grew out of a grievance which could have been submitted to arbitration under the contract and, therefore,

fell squarely within the Union's promise not to strike. In the instant case, the employer made similar allegations before an arbitrator.

In the *Sinclair* case, the employer sought an injunction directly from the Federal Court. In the instant case, the employer sought, first, a cease and desist order from the arbitrator, which it obtained, and, then, sought an injunction in the Federal District Court enforcing the arbitrator's cease and desist order.

In the *Sinclair* case, the District Court, the Court of Appeal, and the Supreme Court, all refused the Company's request for an injunction, holding that the Norris-LaGuardia Act divested the Federal Courts of jurisdiction in issuance of the injunction sought.

In the instant case, the employer has sought to circumvent the plain language, the clear language, and the unambiguous language of *Sinclair* by, first, proceeding to arbitration and obtaining a cease and desist order which, in effect, is an injunction, and then going into Court and asking the Federal District Court to issue a mandatory injunction enforcing the arbitrator's injunction.

However one looks at it, it is inescapable that the Federal Court is enjoining workers' concerted activities for the purpose of "other mutual aid or protection".

Likewise, the language of *Sinclair* is clear that the Norris LaGuardia Act prohibits a Federal Court from issuing such an order. The Court in *Sinclair* stated:

> "In the first place, even the general policy declarations of § 2 of the Norris-LaGuardia Act, which are the foundation of this whole argument, do not support the conclusion urged. That section does not

> purport to limit the Act to the protection of collective bargaining but, instead, expressly recognizes the need of the anti-injunction provisions to insure the right of workers to engage in 'concerted activities for the purpose of collective bargaining **or other mutual aid or protection.**' Moreover, the language of the specific provisions of the Act is so broad and inclusive that it leaves not the slightest opening for reading in any exceptions beyond those clearly written into it by Congress itself.
>
> We cannot ignore the plain import of a congressional enactment, particularly one which, as we have repeatedly said, was deliberately drafted in the broadest of terms in order to avoid the danger that it would be narrowed by judicial construction." (370 U.S. at 202-203, 82-A S. Ct. at 1332-1333)

Arguments were raised in *Sinclair* similar to arguments raised here, and also posed by the Court of Appeals. In short, its arguments are that if a Union can be free to violate the "no strike" clause, then clauses requiring arbitration and prohibiting strikes are hollow contractual rights of an employer. The first answer to such arguments is that the Norris-LaGuardia Act has been on the books for thirty-five (35) years and all parties are now and have been aware of it and its implications in collective bargaining. The history of arbitration during that time shows that this is indeed a spurious argument. Arbitration has grown and, in the last ten (10) years, has become a permanent fixture in labor relations in this country. There is no evidence that it is weakening. Decisions of Federal and State courts show that arbitration is becoming stronger; and the fact of arbitration has become accepted in industrial conflicts.

The second answer to such an argument is that Congress, which has written, during the life of the Norris-

LaGuardia Act, much labor legislation to correct evils that it found, has not found it necessary or desirable as of this date, to limit the application of Norris-LaGuardia in the area concerned here; that is, strikes in violation of labor agreements. The Supreme Court, in *Sinclair* and in other cases (*United States vs. Hutchison*, 312 U.S. 219, 85 L. Ed. 2d 440, 61 S. Ct. 463) (1941) has continued to give a broad interpretation to the Norris-LaGuardia Act and at no time has Congress seen fit to change that interpretation by legislative act.

The third answer to the arguments set out above is that an employer does have available direct and strong means of protecting itself from strikes in violation of a collective bargaining agreement. Instigating employees can be discharged, or otherwise disciplined. Other employees can likewise be disciplined. Employers may, through arbitration or court action, seek damages. These are only two of the means which are available to an employer. There are others.

We submit that *Sinclair* must not be circumvented, or its holding narrowed, merely because an arbitrator was the first to issue an injunction.

We submit that the plain meaning of the Norris-LaGuardia Act, as interpreted by the *Sinclair* case, must stay until and unless Congress decides otherwise.

B.

Philadelphia Marine Trade Association Case

This case is similar in many respects to the instant case. In the cited case, an arbitrator had decided an issue adversely to the Union. A series of work stoppages occurred, which the employer claimed were in violation of

the arbitrator's award, as well as the contract. The employer successfully sought an award in the Federal District Court. Subsequently, certain persons were held to be in contempt of the Court's injunction order. When the contempt case got to the Supreme Court, many thought that the Norris-LaGuardia issue would be answered. The Court, however, in considering the case, held that the District Court had issued an injunction which was too vague to be understood and, indeed, the Court described the decree as unintelligible. The employer here has obtained from the arbitrator such an award and now seeks to have that framed by a mandatory injunction of the Federal Court. The arbitrator's award orders the unions, their officers, agents, representatives, and members "to cease and desist from work stoppages in violation of their contract with the Association" (Appendix "C"). We submit it is impossible for such an award to be enforced and that a Court's mandatory injunction enforcing such an award cannot comply with Rule 65 (d) of the Federal Rules of Civil Procedure.

Indeed, the wisdom of the Norris-LaGuardia Act in the *Sinclair* case becomes more apparent when it is understood that such awards, injunctions, or injunctions enforcing awards, are impossible to frame prospectively. It may well be argued that an award or an injunction can stop acts then being committed, when such acts are in the nature of a strike or work stoppage in violation of a contract; but, when one attempts to frame an award or an injunction to prohibit prospective acts "in violation of the contract", the difficulties mount, and it soon becomes clear that each case must stand on its own. If such orders are enforced, it will mean placing the Federal District Courts in place of the arbitrators, and having to decide questions which the Supreme Court has held must be left to the arbitrator.

II. THE QUESTIONS PRESENTED BY THE PETITION ARE OF MAJOR SIGNIFICANCE IN THE ADMINISTRATION OF THE NATIONAL LABOR LAWS AND AFFECT BASIC INTERPRETATION OF COLLECTIVE BARGAINING AGREEMENTS.

The questions are of major significance because they affect practically every collective bargaining agreement in the nation. There are literally thousands of collective bargaining agreements with "no strike" clauses and with provisions for grievances and arbitration. It is of major importance to determine whether or not an employer, through the guise of an arbitration award, can effectively circumvent the provisions of Norris-LaGuardia as interpreted by *Sinclair*.

Recent Supreme Court decisions strongly indicate in majority, concurring, and dissenting opinions, that the Court is fully aware of the importance of the questions and of the impact of any decision finally settling the problems upon collective bargaining agreements and the parties to those agreements. In the *Philadelphia Marine* case, the two concurring opinions both specifically reserve judgment on the application of *Sinclair* on the issue presented in that case.

In *Avco Corporation vs. Aero Lodge No. 735, Int'l Assn. of Mach. & Aero W.*, ... U.S. ....., ... L. Ed. 2d ....., 88 S. Ct. 1235 (April 8, 1968), majority and concurring opinions specifically reserved the question of the *Sinclair* case's application to the questions raised in the cited case.

The Supreme Court has held that certain strikes, or concerted activity, are not prohibited by a "no strike" clause and that the action by employees engaging in such a strike is a protected activity. *Mastro Plastics Corporation vs. National Labor Relations Board*, 350 U.S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956).

The whole question of the applicability of the Norris-LaGuardia Act and *Sinclair* on strikes or work stoppages, allegedly in violation of a contract or of an arbitrator's award, is ripe for decision. Parties to collective bargaining agreements need to know the answer to the questions presented in this petition.

VII.

CONCLUSIONS

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ALVIN J. LISKA,
2-W-23 City Hall,
New Orleans, Louisiana,
Telephone: 529-4311
Attorney for Petitioner,
General Longshore Workers,
I.L.A. Local Union No, 1418.

VICTOR H. HESS, JR.,
1411 Decatur Street,
New Orleans, Louisiana 70116,
Telephone: 949-2742
Attorney for Petitioner,
General Longshore Workers,
I.L.A. Local Union No. 1419

Of Counsel:
LISKA, EXNICIOS & NUNGESSER,
New Orleans, Louisiana.

JACKSON & HESS,
New Orleans, Louisiana.

APPENDIX A

In The
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24738

NEW ORLEANS STEAMSHIP ASSOCIATION,
Appellant,

versus

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1418, ET AL,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

(January 26, 1968)

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

BELL, Circuit Judge: Appellant New Orleans Steamship Association appeals from an order dismissing its complaint which in substance amounted to a request for a mandatory injunction to enforce an arbitration award. The award directed two local unions, the appellees, and their members to cease and desist work stoppages in violation of a collective bargaining agreement. The District Court was of the view that enforcement of such an order by a federal court was barred by the Norris-LaGuadria Act, 29 USCA § 104.[1] We reverse.

[1] 29 USCA, § 104:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employments;"

Appellant is an association representing various employers who employ longshoremen for the loading and unloading of cargo in the Port of New Orleans. These longshoremen are members of and are represented by appellee unions. Appellant and the unions are signatories to a collective bargaining agreement. The parts of the agreement which are involved in this dispute are a no strike clause, an arbitration clause, and a clause empowering the arbitrator to issue a desist order. They provide in pertinent part:

> "(a) *No Strikes—No Lockouts*
>
> "There shall be no strikes, work stoppages, nor shall there be any lockouts.
>
> "(b) *Disputes Procedure and Arbitration*
>
> "The parties accept the principle that any dispute involving the interpretation or application of the terms of this agreement shall be resolved in an orderly and expeditious manner. They commit themselves to the procedure outlined below. Failure by either party to staff and maintain the permanent disputes committee provided for herein and failure to deal with disputes under the disputes procedure shall constitute a violation of this agreement.
>
> "(c) These steps shall be followed to insure prompt resolution of disputes:
>
> "Step 1. When a problem arises it shall be discussed immediately between the appropriate representatives of the employer and local union involved; if they are unable to reach a satisfactory settlement, either side may request immediate referral of the matter to Step 2. As soon as such request is made known each party shall notify its representatives on the permanent disputes committee.
>
> "Step. 2. There shall be established a permanent disputes committee consisting of two representatives of the Association and the presidents of Locals 1418 and 1419. Each member shall have a desig-

nated alternate who shall serve in the event a member is unavailable. If the matter is not disposed of in this Step 2 within forty-eight (48) hours of the origin of the dispute, or within such additional time mutually agreed upon, either party may take the dispute to final and binding arbitration."

* * *

"(d) Either party to a dispute may by-pass the procedure leading up to arbitration and obtain arbitration forthwith whenever a violation of sections (a) and/or (b) of this Article shall be alleged. In this event, a notice of such allegation shall be made by telegram to the other party and to the arbitrator. The arbitrator shall hold a prompt hearing within seventy-two (72) hours after receipt of the notice and shall render an award within twelve (12) hours after the hearing. In such case, the arbitrator shall make findings of fact concerning the alleged violation and shall prescribe appropriate relief, including an order to desist therefrom."

The arbitrator in this matter served by virtue of his inclusion on a panel of six permanent arbitrators selected by the parties to serve for the duration of the agreement. On October 5, 1965, appellant notified the arbitrator that appellees had engaged in work stoppages and requested a hearing within 72 hours as provided in the agreement, Article XVIII, § (d), *supra*. A four day hearing was held commencing on October 8, 1965. The award was entered on December 13, 1965. The arbitrator found that stoppages had occurred in violation of the contract and sustained appellant's grievance. He directed appellees, their officers, agents, representatives, and members to ". . . cease and desist from work stoppages in violation of their contract . . ."

Alleging that work stoppages had occurred subsequent to this award, appellant sought relief in the District Court in March, 1966, in the form of an order enforcing the

award of the arbitrator. The District Court dismissed the complaint, relying on the Norris-LaGuardia Act, *supra*, and the cases of *Sinclair Refining Co. v. Atkinson*, 1962, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440; and *Gulf & South American Steamship Co., Inc. v. National Maritime Union of America, AFL-CIO*, 5 Cir., 1966, 360 F. 2d. 63.

The Court erred in its interpretation of our *Gulf & South American Steamship case.* Our holding there was that the arbitrator exceeded his jurisdiction in making the award and thus there could be no judicial enforcement of the award. We did not reach the question presented here. We held, as had the District Court, that *Sinclair Refining Company v. Atkinson, supra*, was direct authority on the question and controlling. Absent jurisdiction in the arbitrator, the case was nothing more than an effort to obtain a federal injunction to enjoin a work stoppage arising out of a labor dispute.

Our decision here turns on a construction of the *Sinclair* holding. That case did not involve an arbitration award. It involved an effort to obtain an injunction to enforce a no strike clause where strikes were ensuing but where there had been no arbitration. The Supreme Court has not considered the precise question with which we are now concerned. Nevertheless, the sweep of *Sinclair* is broad; the Norris-LaGuardia Act is treated as all encompassing despite § 301 of the Labor-Management Relations Act, 29 USCA, § 185, and the congressional and national policy enunciated in *Textile Workers v. Lincoln Mills*, 1957, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972, and the *Steelworkers Triology*,[2] fostering the arbitration process.

---

[2] *United Steelworkers v. American Mfg. Co.*, 1960, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403; *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 1960, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409; *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 1960, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424.

The court stated in *Textile Workers v. Lincoln Mills, supra*, that the agreement of the employer to arbitrate disputes is the *quid pro quo* for the agreement not to strike. These cases and their progency now make it settled law that federal courts can compel parties to collective bargaining agreements to carry out their agreements to arbitrate. The court alluded to this in *Sinclair* but stated that such injunctive orders do not conflict with the matters (strikes, work stoppages, and picketing) over which federal courts were deprived of jurisdiction by the Norris-LaGuardia Act.

Meanwhile, it has become common-place for federal courts to enforce arbitration awards by mandatory injunction where matters other than strikes, work stoppages or picketing are involved. See e.g., *Minute Maid Co. v. Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers, Local Union # 444*, 5 Cir., 1964, 331 F. 2d 281; *Fontainebleau Hotel Corp. v. Hotel Employees' Union Local 255*, 5 Cir., 1964, 328 F. 2d 310.

In sum, the situation to date is that arbitration is encouraged; it may be compelled where the parties have contractually adopted such a procedure. And the award may be judicially enforced up to the point of those matters proscribed by Norris-LaGuardia.

The question presented now is the power of the District Court to enforce the award of an arbitrator in a setting where the arbitrator, in the exercise of undisputed contractual jurisdiction, has ordered an end to work stoppages. The union has refused to abide by his order and asserts that the court is without jurisdiction to remedy the breach. Practically, this is the ultimate or last step in the arbitration process. The agreement between the parties is valid and the authority of the arbitrator over the

subject matter and to enter a desist order is not disputed. We can assume, *arguendo*, that the employer agreed to arbitrate grievances in return for the no work stoppage clause. Does *Sinclair* foreclose relief to the employer? We hold that it does not.

The question was before the court in *International Longshoremen's Assn. v. Philadelphia Marine Trade Association*, 1967, 19 L. Ed. 2d 236, ... U.S. ....., 88 S. Ct. ....., but was not reached due to the impreciseness of the injunctive order involved. Justice Douglas, concurring in part and dissenting in part in that case, forecast the problem which the *Sinclair* holding poses in the situation here present where we must accommodate, if possible, two national policies: The proscripiton of Norris-LaGuardia in labor disputes and the use of arbitration to avoid labor disputes. He considered *Sinclair*, where there had been no arbitration, distinguishable from a case where the arbitration award, as here, is frustrated through a refusal to abide by the decision of the arbitrator.[3] Our approach is to distinguish *Sinclair* on this same basis and on the more than semantical ground that there is a real difference between an ordinary injunction and an order enforcing the award of an arbitrator although the end result is the same.

In this case the parties agreed to the remedy of a de-

---

[3] At least one state court has considered the same issue. The New York Court of Appeals "confirmed" an award of an arbitrator enjoining a union from violating a no slow down clause of a collective bargaining agreement. This was found despite a New York statute modeled after the Norris-LaGuardia Act. The Court reasoned:

> ". . . Section 876-2, like its prototype the Federal Norris-LaGuardia Act, 29 USCA § 101 et seq., was the result of union resentment against the issuance of injunction in labor strifes. But arbitration is voluntary and there is no reason why unions and employers should deny such powers to the special tribunals they themselves create. Section 876-a and Article 84 (Arbitration) are both in our Civil Practice Act. Each represents a separate public policy and by affirming here we harmonize those two policies." *Ruppert v. Egelhofer*, 1958 3 N.Y. 2d 576, 170 N.Y.S. 2d 785, 148 N. E. 2d 129, 70 ALR 2d 1048.

sist order by the arbitrator. Such an order was entered and breached. The court in enforcing such order or award, although injunctive in nature, would be doing no more than enforcing the agreement of the parties. This not unusual action on the part of a court will lie unless the court has been deprived of jurisdiction by the Norris-LaGuardia Act.

Norris-LaGuardia is limited to labor disputes and we consider the instant controversy to be outside the scope of a labor dispute as such. We have before us a contract wherein the parties have ceded their remedy of self-help in a labor dispute to arbitration even to the point of permitting the arbitrator to grant a desist order. Once the arbitration was completed, the matter became ripe for specific performance and fell outside the scope of Norris-LaGuardia.

We think the logic of the arbitration policy compels this result; otherwise one of the parties to a collective bargaining agreement containing arbitration and no strike or work stoppage clauses has a hollow right indeed. He is told: Our national policy is to encourage arbitration; you may contract to arbitrate and obtain a no strike clause as the *quid pro quo* for your agreement to arbitrate; a recalcitrant party will be compelled to arbitrate any dispute arising therefrom; and the arbitrator may be empowered contractually to issue a desist order. We do not believe in light of the body of law which has grown from § 301 that the law will now say to this party that, having done these things, there is no remedy in the event the opposite party decides to ignore the award of the arbitrator to desist the stoppage. No such result should be imputed to Congress; the Supreme Court did not go so far in *Sinclair*.

Our judgment is that the Norris-LaGuardia Act and arbitration under the auspices of § 301 of the Labor-Man-

agement Relations Act, construed in *pari materia*, can be meaningfully accommodated. They relate to the same subject matter—labor relations—and they should be construed together. *Cf. United States v. Stewart*, 1940, 311 U.S. 60, 85 L. Ed. 40, 61 S. Ct. 102. Each has its place in the labor relations arena; the vitality of Norris-LaGuardia is in no wise diminished by the judicial enforcement of the award of an arbitrator made pursuant to a contract.

The District Court had jurisdiction under these circumstances to enforce the award of the arbitrator and erred in dismissing the complaint.

REVERSED AND REMANDED for further proceedings not inconsistent herewith.

APPENDIX B

UNITED STATES COURT OF APPEALS
Fifth Circuit

Office of the Clerk

Edward W. Wadsworth
Clerk

Room 408—400 Royal St.
New Orleans, La. 70130

March 12, 1968

Re: No. 24738—New Orleans Steamship Association
vs. General Longshore Workers,
I.L.A. Local Union # 1418, Et Al

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition ( ) for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

EDWARD W. WADSWORTH, CLERK,

By /s/ Frances Wolff,
Deputy Clerk.

cc: Messrs. Samuel Lang
Andrew C. Partee, Jr.
Attorneys at Law
New Orleans, La.

Mr. Victor H. Hess, Jr.
Attorney at Law
New Orleans, La.

Mr. Alvin J. Liska
Attorney at Law
New Orleans, La.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 16398
CIVIL ACTION

NEW ORLEANS STEAMSHIP ASSOCIATION,
a Corporation

vs.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION # 1419, an Unincorporated Association, AFL-CIO

CHRISTENBERRY, J.

This is a suit brought by the New Orleans Steamship Association (hereafter referred to as Association) against the General Longshore Workers, I.L.A. Local Unions Nos. 1418 and 1419 (hereafter referred to as Unions) based upon violation of and seeking performance of a contract between the parties arising under the Labor-Management Relations Act (29 U.S.C. § 185) and 28 U.S.C. § 1337. The Association alleges that it entered into a labor contract with the Unions which contains a no-strike clause and an arbitration clause. On October 5, 1965 one of the arbitrators received a telegram from the Association alleging a series of work stoppages and requesting that the arbitrator call a hearing. After the hearing the arbitrator entered an award ordering the Unions and their members to cease

and desist from work stoppages in violation of their contract with the Association.

The Association asserts that the Unions violated the order of the arbitrator and Article XVIII of the contract involved herein by engaging in other work stoppages on December 27, 1965, February 21, 1966, and on March 8, 1966.

Now before the Court are motions of the Association for a mandatory injunction to enforce the award of the arbitrator; and motion of the Unions to dismiss Association's motion for a mandatory injunction.

This Court had the identical problem before it in *Gulf & South American Steamship Co., Inc. vs. National Maritime Union of America, A.F.L.-C.I.O.*, affirmed 360 F. 2d 63 (5th Cir., 1966) when it dismissed the plaintiff's complaint against the union on the ground that the Court was without jurisdiction to grant injunctive relief citing *Sinclair Refining Co. v. Atkinson*, 1962, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440.

The Fifth Circuit in affirming this Court's decision stated:

> "The District Court dismissed the complaint on the ground that it was without jurisdiction to grant the injunctive relief sought in view of § 4 of the Norris-LaGuardia Act. 29 U.S.C.A. § 104. The court rejected the contention of the employer that § 301 of the Taft-Hartley Act, 29 U.S.C.A. § 185, was a pro tanto repealer of § 4 of the Norris-LaGuardia Act, and that the court thus had jurisdiction.
>
> The court relied on *Sinclair Refining Co. v. Atkinson*, 1962 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440 as authority for this holding. That decision of the Supreme Court is direct authority on the ques-

tion and is controlling. There the employer sought the injunction directly while here the injunction is sought under the guise of enforcing the award of an arbitrator but this is a distinction without a difference under the facts of this case, and any other result would be exalting form over substance."

The motion of the defendant, General Longshore Workers, I.L.A. Local Union No. 1418 and No. 1419 to dismiss plaintiff's motion for a mandatory injunction is **GRANTED.** The motion of the plaintiff, New Orleans Steamship Association, for a mandatory injunction is **DENIED.**

New Orleans, Louisiana, this 28th day of February, 1967.

/s/ Herbert W. Christenberry
UNITED STATES DISTRICT JUDGE

LIBRARY
SUPREME COURT, U. S.

FILED
JUN 10 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 116

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION #1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

SAMUEL LANG
ANDREW C. PARTEE, JR.
1010 Whitney Bank Building
New Orleans, Louisiana 70130,
Attorneys for Respondent

Kullman and Lang
1010 Whitney Bank Building
New Orleans, Louisiana 70130,
Of Counsel

TABLE OF CONTENTS

	Page
Question Presented	1
Reasons for Denying the Writ	2
Conclusion	5
Proof of Service	5

AUTHORITIES CITED

Cases

Avco Corporation v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, _____ U.S. _____, 88 S. Ct. 1235 (1968), 20 L. Ed 2d 126 4

Carey v. Westinghouse, 375 U.S. 261 (1964), 84 S. Ct. 401, 11 L. Ed 2d 320 3

Ford Motor Company and United Auto Workers, 1963 CCH *Labor Arbitration Awards*, 63-2 ARB 8491 4

International Longshoremen's Association v. *Philadelphia Marine Trade Association*, _____ U.S. _____, 88 S. Ct. 201 (1967), 19 L. Ed 2d 236 4

Sinclair Refining Company v. Atkinson, 370 U.S. 195 (1962), 82 S. Ct. 1328, 8 L. Ed 2d 440 ..... 2, 4

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957), 77 S. Ct. 912, 1 L. Ed. 2d 972 3

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), 80 S. Ct. 1347, 4 L. Ed 2d 1409 3

AUTHORITIES CITED (Continued)

Page

United Steelworkers of America v. Enterprise Wheel & Car Corporation, 363 U.S. 593 (1960), 80 S. Ct. 1358, 4 L. Ed 2d 1424 3

United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564 (1960), 80 S. Ct. 1343, 4 L. Ed 2d 1403 3

Wiley v. Livingston, 376 U.S. 543 (1964), 84 S. Ct. 909, 11 L. Ed 2d 898 3

Statute

Norris-LaGuardia Act, 29 U.S.C.A., Sec. 101 et seq 1

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

No. 1454

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION #1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this cause on January 26, 1968, 389 F. 2d 369.

QUESTION PRESENTED

The sole issue for determination is whether the Norris-LaGuardia Act, 29 U.S.C.A. Section 101, et seq., prohibits the enforcement by a United States District Court of an arbitrator's award, when such an award it-

self directs a union to cease and desist from the breach of a no-strike clause in a collective bargaining agreement.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals has correctly decided the question involved, and there is no conflict thereon with the decisions of other Courts of Appeals or with applicable decisions of this Court.

Petitioners have cited no decisions of United States Court of Appeals of any other circuits to show a conflict with that of the case under consideration, and there are none. The issue in this case is not that decided in *Sinclair Refining Company v. Atkinson*, 370 U.S. 195 (1962), 82 S. Ct. 1328, 8 L. Ed 2d 440. There the question was whether the United States Courts are prevented by the Norris-LaGuardia Act from enjoining a strike in breach of a no-strike clause. In *Sinclair* there was not involved the question of authority of a Federal Court to enforce an arbitration award which itself enjoins the breach of a no-strike clause. This Court stated, 370 U.S. 195, at pp. 213-214:

> "The plain fact is that Section 301 (of the Labor Management Relations Act, 1947, as amended, 29 U.S.C.A., Section 185), as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional demands of the Norris-LaGuardia Act does not

directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

II. *The enforcement of the arbitration award in this case is consistent with the developing federal law implementing the policy of encouraging agreements to arbitrate labor disputes.*

The Court has consistently declared, in a long line of cases beginning with *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), 77 S. Ct. 912, 1 L. Ed 2d 972, that Congress has established a national policy seeking to avoid strikes and to achieve and maintain industrial peace through collective bargaining and arbitration. See, also, *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), 80 S. Ct. 1347, 4 L. Ed. 2d 1409; *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960), 80 S. Ct. 1343, 4 L. Ed 2d 1403; *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960), 80 S. Ct. 1358, 4 L. Ed 2d 1424; *Wiley v. Livingston*, 376 U.S. 543 (1964), 84 S. Ct. 909, 11 L. Ed 2d 898, and *Carey v. Westinghouse*, 375 U.S. 261 (1964), 84 S. Ct. 401, 11 L. Ed 2d 320.

Moreover, arbitrators have for some years been issuing orders to end strikes, and they have rather freely been complied with. See, for example, *Ford Motor Company and United Auto Workers,* 1963 CCH *Labor Arbitration Awards,* 63-2 ARB 8491. The absence of court tests of the precise point over the years suggests that the principle is well received.

In *International Longshoremen's Association v. Philadelphia Marine Trade Association,* _____ U.S. _____, 88 S. Ct. 201 (1967), 19 L. Ed 2d 236, and in *Avco Corporation v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers,* _____, U.S. _____, 88 S. Ct. 1235 (1968), 20 L. Ed 2d 126, it was indicated that the basic premise of *Sinclair v. Atkinson* should be re-examined in a proper case, as perhaps we have here. If that were the basis of consideration, Respondent could hardly object to review, for it must acknowledge that the question presented there is one which industry and labor at large need to have settled for the advancement of industrial peace.

However, as noted above, *Sinclair v. Atkinson* is distinguishable and the decision of the Court of Appeals below is sound, it is clear, and it accords with the fundamental principles enunciated by this Court; in a word, the decision of the Court of Appeals follows logically and naturally from the line of Supreme Court decisions herein cited.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 7th day of June, 1968.

s/ Samuel Lang

SAMUEL LANG
ANDREW C. PARTEE, JR.,
1010 Whitney Bank Building
New Orleans, Louisiana 70130
Attorneys for Respondent

Kullman and Lang
1010 Whitney Bank Building
New Orleans, Louisiana 70130,
Of Counsel

PROOF OF SERVICE

I, Samuel Lang, one of the attorneys for New Orleans Steamship Association, Respondent herein, a member of the Bar of the Supreme Court of the United States, hereby certify that on this 7th day of June, 1968, I served copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on Petitioners, the other parties hereto, by mailing copies in duly addressed envelopes, with first-class, certified

mail postage prepaid, to their attorneys of record, as follows:

Mr. Victor H. Hess, Jr.,
Attorney for Petitioner
Local Union #1419,
1310 Oil and Gas Building,
New Orleans, Louisiana;

Mr. Alvin J. Liska,
Attorney for Petitioner
Local Union #1418,
404 Richards Building,
New Orleans, Louisiana

s/ Samuel Lang

SAMUEL LANG
Kullman and Lang,
1010 Whitney Bank Building,
New Orleans, Louisiana 70130,
Attorney for New Orleans Steamship Association